

[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

**Nationwide Categorical Waivers under Section 1605 (Buy American) of the
American Recovery and Reinvestment Act of 2009 (Recovery Act)**

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of Limited Waivers

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality), with respect to Par 20, Par 30 and Par 38 lamps (as specified infra) to be utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE- Recovery Act Funded State Energy Program (SEP) award.

DATES: Effective Date: 1/31/2013 2/15/13

FOR FURTHER INFORMATION CONTACT: Christine Platt-Patrick, Office of

Energy Efficiency and Renewable Energy (EERE), (202) 287-1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE-2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, section 1605(b)(2), the head of a Federal department or agency may issue a “determination of inapplicability” (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality (“nonavailability”). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redelegation Order No. 00-002.01F, dated October 31, 2012. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: Par 20, Par 30 and Par 38 replacement lamps, that are both rated for outdoor open fixtures exposed to water and closed fixtures with heat concern, are dimmable, and meet ANSI # ANSI ANSLG C78.43-2007 requirements are not are not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above items, utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE- Recovery Act Funded State Energy Program (SEP) award, qualify for the “nonavailability” waiver determination at this time.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close

collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determinations.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver request for the four products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing the solar experts employed by the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed

the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers for these items have been unsuccessful.

The specific needs of this project cannot be met by current manufacturers of LED lamps in the United States. However, because of the evolving nature of LED manufacturing, the availability of products is anticipated to increase. As such EERE has chosen to issue a project-specific waiver for the San Antonio River Walk project only. Future requests will be considered on a case-by-case basis.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on February 15, 2013, a nationwide categorical waiver of section 1605 of the Recovery Act was issued for Par 20, Par 30 and Par 38 replacement lamps, that are both rated for outdoor open fixtures exposed to water and closed fixtures with heat concern, are dimmable, and meet ANSI # ANSI ANSLG C78.43-2007 requirements to be utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE- Recovery Act Funded State Energy Program (SEP) award.. This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with

respect to expenditures within the purview of his responsibility. Consequently, this waiver applies to all EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111-5, section 1605.

Issued in Washington, DC on 8 2/15/13.



Dr. David T. Danielson
Assistant Secretary
Energy Efficiency and Renewable Energy
U.S. Department of Energy

120 VAC Par20

Dims down to 7%. Screws into existing 120 VAC Par30 sockets. Meets ANSI # ANSI ANSLG C78.43-2007

Dims down to 7%. Screws into existing 120 VAC Par38 sockets. Meets ANSI # ANSI ANSLG C78.43-2007.

The City of San Antonio (COSA) has identified an LED lamp for their EECBG Municipal retrofit project, that's made in Quebec, Canada and which fits multiple applications for their River Walk pedestrian lighting project (in trees, under bridges, - up lights, etc.). Not utilizing this lamp will require that the City purchase multiple technologies and create O&M inventory issues—rather than having a single lamp that universally fits all applications, COSA will have to source multiple lamps that fit the various applications.

Can't tell whether enclosed or open from the ground.

Utilized existing contractor, Siemens, Phillips, Sylvania, GE.

Total lamp # and total cost-

38- 144 lamps

30-

20-

667 lamps. Total cost-



Department of Energy
Washington, DC 20585

**ASSISTANT SECRETARY OF ENERGY
FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY**

MEMORANDUM OF DECISION

SUBJECT: Determination of inapplicability (waiver) of section 1605 of the American Reinvestment and Recovery Act of 2009 (Recovery Act Buy American provisions) for Par 20, Par 30 and Par 38 lamps (as specified *infra*) to be utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE- Recovery Act Funded State Energy Program (SEP) award.

This waiver applies only to this project, and expires May 1, 2013.

Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, section 1605(b)(2), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality ("nonavailability"). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redlegation Order No. 00-002.01F, dated October 31, 2012. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: Par 20, Par 30 and Par 38 replacement lamps, that are both rated for outdoor open fixtures exposed to water and closed fixtures with heat concern, are dimmable, and meet ANSI # ANSI ANSLG C78.43-2007 requirements are not are not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above items, utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE- Recovery Act Funded State Energy Program (SEP) award, qualify for the "nonavailability" waiver determination at this time.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determinations.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver request for the four products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing the solar experts employed by the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers for these items have been unsuccessful.

The specific needs of this project cannot be met by current manufacturers of LED lamps in the United States. However, because of the evolving nature of LED manufacturing, the availability of products is anticipated to increase. As such EERE has chosen to issue a project-specific waiver for the San Antonio River Walk project only. Future requests will be considered on a case-by-case basis.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111-5 and Redesignation Order 00-002-01F, with respect to Recovery Act projects funded by EERE, I hereby issue a "determination of inapplicability" (a waiver under the Recovery Act Buy American provision) for Par 20, Par 30 and Par 38 replacement lamps, that are both rated for outdoor open fixtures exposed to water and closed fixtures with heat concern, are dimmable, and meet ANSI # ANSI ANSLG C78.43-2007 requirements.

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with

respect to expenditures within the purview of his responsibility. Consequently, this waiver applies only to EERE projects carried out under the Recovery Act.

Furthermore, I reserve the right to revisit and amend this determination based on new developments or changes in the domestic manufacturing capacity for these four product types.



Date:

2/15/13

Dr. David T. Danielson
Assistant Secretary
Energy Efficiency and Renewable Energy
U.S. Department of Energy

February 13, 2013

MEMORANDUM FOR: DAVID T. DANIELSON, PH.D.
ASSISTANT SECRETARY
ENERGY EFFICIENCY AND RENEWABLE ENERGY

THROUGH: STEVEN G. CHALK
ACTING DEPUTY ASSISTANT SECRETARY FOR
RENEWABLE ENERGY
OFFICE OF TECHNOLOGY DEVELOPMENT
ENERGY EFFICIENCY AND RENEWABLE ENERGY

FROM: CHRISTINE PLATT-PATRICK
WEATHERIZATION AND INTERGOVERNMENTAL PROGRAM
OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY

SUBJECT: **ACTIONS:**
1) Approval of determination of inapplicability ("nonavailability" waiver) of section 1605 of the Recovery Act of 2009 (the Buy American provision) for listed technologies specified *infra*.
2) Approval to publish determinations in the *Federal Register*.

ISSUES:

- 1) Whether to approve determination of inapplicability (waiver) of section 1605 of the American Reinvestment and Recovery Act of 2009 (Recovery Act Buy American provisions) for Par 20, Par 30 and Par 38 lamps (as specified *infra*) to be utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE-Recovery Act Funded State Energy Program (SEP) award.
- 2) Whether to publish the above in the *Federal Register*.

BACKGROUND:

Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, section 1605(b)(2), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality ("nonavailability"). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redelegation Order No. 00-002.01F, dated October 31, 2012.

Par 20, Par 30 and Par 38 replacement lamps, that are both rated for outdoor open fixtures exposed to water and closed fixtures with heat concern, are dimmable, and meet ANSI # ANSI ANSLG C78.43-2007 requirements are not are not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above items, utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE- Recovery Act Funded State Energy Program (SEP) award, qualify for the “nonavailability” waiver determination at this time.

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In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111–5 and Redelegation Order 00-002-01E, with respect to Recovery Act projects funded by EERE, I hereby issue a “determination of inapplicability” (a waiver under the Recovery Act Buy American provision) for Par 20, Par 30 and Par 38 replacement lamps, that are both rated for outdoor open fixtures exposed to water and closed fixtures with heat concern, are dimmable, and meet ANSI # ANSI ANSLG C78.43-2007 requirements.

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies only to EERE projects carried out under the Recovery Act.

OPTIONS:


Issuing this waiver will allow an EERE Recovery Act financial assistance recipient to move forward with the project.

In addition, section 1605(c) of the Recovery Act requires the head of a Federal department or agency to publish in the *Federal Register* a detailed written justification as to why the provision is being waived. Section 176.80 (b)(2) of Title 2 of the Code of Federal Regulations requires the head of the Federal department or agency to publish a notice in the *Federal Register* within two weeks after making the determination of inapplicability under section 1605 of the Recovery Act (granting a waiver of the Buy American provisions). Publishing this waiver in the *Federal Register* in a timely manner will comply with these requirements.

Non-issuance of the waiver would prevent a number of individual EERE financial assistance recipients from spending money quickly on critical, high-value projects in their communities. The goods included in this waiver are not produced in the United States, so recipients would have to change their project plans – causing substantial delays-- if the waiver is not issued.

RECOMMENDATIONS:

- 1) The EERE Buy American Coordinator recommends that the Assistant Secretary sign the attached Memorandum of Determination of inapplicability (waiver) of section 1605 of the American Reinvestment and Recovery Act of 2009 (Recovery Act Buy American provisions) for Par 20, Par 30 and Par 38 lamps (as specified *supra*) to be utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE-Recovery Act Funded State Energy Program (SEP) award.
- 2) The EERE Buy American Coordinator further recommends that the Assistant Secretary sign the attached *Federal Register* Notices such that the waivers can be published in the *Federal Register* as required by statute.

Approve:  _____ Disapproved: _____ Date: 2/15/13

CONCURRENCE: GC 61- Beth Kelly